

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 RICHARD WEDDLE,

4 3:16-cv-00634-MMD-CBC

5 Plaintiff,

6 v.

7 **REPORT AND RECOMMENDATION**
OF U.S. MAGISTRATE JUDGE¹8 ISIDRO BACA, *et al.*,

9 Defendants.

10

11 This case involves a civil rights action filed by Plaintiff Richard Weddle ("Weddle")
 12 against Defendants Pamela Feil, Jason O'Dea, and David Carpenter² (collectively
 13 referred to as "Defendants"). Currently pending before the court is Defendants' motion
 14 for summary judgment. (ECF No. 82.) Despite being given numerous opportunities to
 15 file an opposition, Weddle did not oppose the motion. (See ECF Nos. 89, 93.) Having
 16 thoroughly reviewed the record and papers, the court recommends Defendants' motion
 17 for summary judgment (ECF No. 82) be granted.

18 **I. BACKGROUND AND PROCEDURAL HISTORY**

19 Weddle is an inmate in the custody of the Nevada Department of Corrections
 20 ("NDOC") and is currently housed at the High Desert State Prison ("HDSP"). (ECF No.
 21 10.) However, the events giving rise to this case took place at the Lovelock Correctional
 22 Center ("LCC"). (*Id.*)

23

24 ¹ This Report and Recommendation is made to the Honorable Miranda M. Du,
 25 United States District Judge. The action was referred to the undersigned Magistrate
 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

26 ² Plaintiff also named Isidro Baca, Robert LeGrand, Bobby Preston, and Brian
 27 Williams as defendants in this action. (ECF No. 10.) However, those defendants were
 28 dismissed by the court after it granted, in part, Defendants' partial motion for summary
 judgment. (See ECF Nos. 24, 46, 51.)

1 Pursuant to 28 U.S.C. § 1915A(a), the District Court screened Weddle's amended
2 complaint on September 26, 2017. (ECF No. 11.) In his amended complaint, Weddle
3 asserted eight claims for relief against Defendants. (ECF No. 10 at 4-32.) Weddle
4 sought injunctive and monetary relief. (*Id.* at 33.)

5 Each of Weddle's claims arise out of the issuance of a disciplinary charge against
6 him in September 2014 by the LCC law librarian, and the events that followed. (ECF No.
7 10). Generally, Weddle alleges his civil rights were violated because the disciplinary
8 charge was false and fabricated and various LCC staff (who are named defendants)
9 knew the charge was false. In spite of this, the disciplinary charge was allowed to
10 proceed and various LCC staff failed to take actions that would have resulted in the
11 charge being dismissed. (See *id.*)

12 Specifically, Weddle claims that on September 5, 2014, he was in the law library
13 at LCC and he initiated a grievance pursuant to the prison policies. (*Id.* at 7.) Defendant
14 Feil, the law librarian at LCC, retaliated against him for initiating this grievance by filing a
15 false disciplinary charge against him for a Major Violation 25 ("MJ 25"), for threatening
16 staff. (*Id.* at 7-8, 10.) After the disciplinary charge was issued, Weddle was ultimately
17 taken to administrative segregation by Defendant O'Dea, who is a corrections officer at
18 LCC. (*Id.* at 9). Although O'Dea allegedly knew the disciplinary charge was false and
19 fabricated, he still placed him in administrative segregation. (*Id.*)

20 A preliminary disciplinary hearing was held on the MJ 25 violation on September
21 10, 2014. (*Id.* at 13.) This hearing was conducted by Defendant Preston, the Preliminary
22 Disciplinary Hearing officer, who failed to review videotape from the alleged incident and
23 refused to allow Weddle to call any witnesses. If the videotape or witnesses had been
24 presented, Weddle claims it would have verified that he did not threaten Feil and thus
25 the disciplinary charge was false. (*Id.*) However, his case proceeded to a disciplinary
26 hearing.

27 The disciplinary hearing was held on October 5 and 6, 2014. This hearing was
28 conducted by the Disciplinary Hearing Officer, Defendant Carpenter, who also failed to

1 review the videotape or allow witnesses to be presented. (*Id.* at 14-15.) Ultimately,
2 Carpenter found Weddle guilty of a reduced charge – a General Violation 9 (“GV 9”), for
3 use of abusive language. (*Id.* at 17-18.) Based on this finding, Defendant Carpenter
4 sanctioned Weddle to fifteen days in disciplinary segregation.

5 Following these proceedings, Weddle filed an administrative appeal to the warden
6 at LCC. (*Id.* at 24.) In the appeal, Weddle argued Defendant Carpenter failed to follow
7 the proper prison policies in conducting the hearing by failing to review the videotape or
8 allow him to present witnesses. (*Id.* at 28.) After reviewing the appeal, Defendant
9 LeGrand upheld the Defendant Carpenter’s decision and the sanction against Weddle.

10 Weddle then sought a second level appeal of Defendant LeGrand’s decision to
11 NNCC Warden, Defendant Baca, who agreed with LeGrand. (*Id.* at 28-29.) Ultimately,
12 Weddle sought to have this disciplinary conviction expunged from his record by
13 Defendant Williams, the Warden at HDSP, who refused to do so. (*Id.* at 31, 33).

14 Based on these facts, Weddle alleged a First Amendment retaliation claim against
15 Defendants Feil and O’Dea in Count I. In Counts II and III, he alleged violations of his
16 Fourteenth Amendment right to due process against Defendants Preston and Carpenter.
17 In Counts IV and V, Weddle alleged that LeGrand and Baca, respectively, are liable
18 under theories of supervisory liability for the due process violations asserted against their
19 employees. In Count VI, Weddle alleged a state law negligence claim against Feil,
20 Carpenter and O’Dea. Finally, in Count VII, Weddle alleged that Williams, a warden at
21 HDSP, in his official capacity only, failed to expunge Weddle’s record of the disciplinary
22 conviction in violation of his due process rights.

23 On April 24, 2018, Defendants filed a partial motion for summary judgment. (ECF
24 No. 24.) This court issued a Report and Recommendation, which the District Court
25 adopted and accepted, granting, in part, and denying, in part the motion for summary
26 judgment. (ECF Nos. 46, 51.) Summary judgment was granted in favor of Defendants
27 as to Counts II, III, IV, V, and the portion of Count VII that might be construed as seeking
28 monetary damages against Defendant Williams. (See *id.*) The Count I retaliation claim

1 and the Count VI negligence claim, as well as the portion of Count VII seeking injunctive
2 relief against Defendant Williams, were allowed to proceed. (*Id.*)

3 **A. Defendants' Motion for Summary Judgment**

4 On December 18, 2019, Defendants filed a motion for summary judgment seeking
5 dismissal of the remaining counts. (ECF No. 82.) Specifically, Defendants argue: (1) the
6 Count I retaliation claim fails as a matter of law because Weddle cannot establish that
7 Feil or O'Dea did anything in retaliation to a grievance that did not exist at the time the
8 Notice of Charges was submitted; (2) the Count VI negligence claim fails because there
9 is no genuine issue of material fact regarding the disciplinary charges related to
10 Weddle's conduct; (3) Defendants are entitled to qualified immunity; and (4) Weddle's
11 request for injunctive relief in Count VII should be denied because Weddle cannot
12 prevail in his underlying case. (ECF No. 82.) Weddle did not file an opposition to the
13 motion for summary judgment, despite being granted extensions to do so. (ECF Nos.
14 89, 93.) The recommended disposition follows.

15 **II. LEGAL STANDARD**

16 Summary judgment allows the court to avoid unnecessary trials. *Nw. Motorcycle*
17 *Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). The court properly
18 grants summary judgment when the record demonstrates that "there is no genuine
19 issue as to any material fact and the movant is entitled to judgment as a matter of law."
20 *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). "[T]he substantive law will identify
21 which facts are material. Only disputes over facts that might affect the outcome of the
22 suit under the governing law will properly preclude the entry of summary judgment.
23 Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson v.*
24 *Liberty Lobby*, 477 U.S. 242, 248 (1986). A dispute is "genuine" only where a
25 reasonable jury could find for the nonmoving party. *Id.* Conclusory statements,
26 speculative opinions, pleading allegations, or other assertions uncorroborated by facts
27 are insufficient to establish a genuine dispute. *Soremekun v. Thrifty Payless, Inc.*, 509
28 F.3d 978, 984 (9th Cir. 2007); *Nelson v. Pima Cnty. Coll.*, 83 F.3d 1075, 1081–82 (9th

1 Cir. 1996). At this stage, the court's role is to verify that reasonable minds could differ
 2 when interpreting the record; the court does not weigh the evidence or determine its
 3 truth. *Schmidt v. Contra Costa Cnty.*, 693 F.3d 1122, 1132 (9th Cir. 2012); *Nw.*
 4 *Motorcycle Ass'n*, 18 F.3d at 1472.

5 Summary judgment proceeds in burden-shifting steps. A moving party who does
 6 not bear the burden of proof at trial "must either produce evidence negating an essential
 7 element of the nonmoving party's claim or defense or show that the nonmoving party
 8 does not have enough evidence of an essential element" to support its case. *Nissan*
 9 *Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Ultimately,
 10 the moving party must demonstrate, on the basis of authenticated evidence, that the
 11 record forecloses the possibility of a reasonable jury finding in favor of the nonmoving
 12 party as to disputed material facts. *Celotex*, 477 U.S. at 323; *Orr v. Bank of Am., NT &*
 13 *SA*, 285 F.3d 764, 773 (9th Cir. 2002). The court views all evidence and any inferences
 14 arising therefrom in the light most favorable to the nonmoving party. *Colwell v.*
 15 *Bannister*, 763 F.3d 1060, 1065 (9th Cir. 2014).

16 Where the moving party meets its burden, the burden shifts to the nonmoving
 17 party to "designate specific facts demonstrating the existence of genuine issues for
 18 trial." *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (citation omitted).
 19 "This burden is not a light one," and requires the nonmoving party to "show more than
 20 the mere existence of a scintilla of evidence. . . . In fact, the non-moving party must
 21 come forth with evidence from which a jury could reasonably render a verdict in the
 22 non-moving party's favor." *Id.* (citations omitted). The nonmoving party may defeat the
 23 summary judgment motion only by setting forth specific facts that illustrate a genuine
 24 dispute requiring a factfinder's resolution. *Liberty Lobby*, 477 U.S. at 248; *Celotex*, 477
 25 U.S. at 324. Although the nonmoving party need not produce authenticated evidence,
 26 Fed. R. Civ. P. 56(c), mere assertions, pleading allegations, and "metaphysical doubt as
 27 to the material facts" will not defeat a properly-supported and meritorious summary

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1 judgment motion, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
 2 586–87 (1986).

3 For purposes of opposing summary judgment, the contentions offered by a *pro*
 4 *se* litigant in motions and pleadings are admissible to the extent that the contents are
 5 based on personal knowledge and set forth facts that would be admissible into evidence
 6 and the litigant attested under penalty of perjury that they were true and correct. *Jones*
 7 *v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004).

8 **III. DISCUSSION**

9 **A. Civil Rights Claims under 42 U.S.C. § 1983**

10 42 U.S.C. § 1983 aims “to deter state actors from using the badge of their
 11 authority to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*,
 12 451 F.3d 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th
 13 Cir. 2000)). The statute “provides a federal cause of action against any person who,
 14 acting under color of state law, deprives another of his federal rights[,]” *Conn v. Gabbert*,
 15 526 U.S. 286, 290 (1999), and therefore “serves as the procedural device for enforcing
 16 substantive provisions of the Constitution and federal statutes,” *Crumpton v. Gates*, 947
 17 F.2d 1418, 1420 (9th Cir. 1991). Claims under section 1983 require a plaintiff to allege
 18 (1) the violation of a federally-protected right by (2) a person or official acting under the
 19 color of state law. *Warner*, 451 F.3d at 1067. Further, to prevail on a § 1983 claim, the
 20 plaintiff must establish each of the elements required to prove an infringement of the
 21 underlying constitutional or statutory right.

22 **B. Count I – First Amendment Retaliation**

23 Weddle alleges that on September 5, 2014, Defendant Feil filed false disciplinary
 24 charges against him in retaliation for initiating an informal grievance and Defendant
 25 O’Dea knew the charges were fabricated, but still took Weddle to the disciplinary
 26 segregation unit. (ECF No. 10 at 7-12.)

27 It is well established in the Ninth Circuit that prisoners may seek redress for
 28 retaliatory conduct by prison officials under § 1983. *Rhodes v. Robinson*, 408 F.3d 559,

1 567 (9th Cir. 2004); *Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009). “Prisoners
 2 have a First Amendment right to file grievances against prison officials and be free from
 3 retaliation for doing so.” *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012). A
 4 retaliation claim has five elements: (1) a state actor took some adverse action against
 5 the inmate, (2) because of, (3) the inmate’s protected First Amendment conduct, and
 6 that the action, (4) chilled the inmate’s exercise of his First Amendment rights, and (5)
 7 did not reasonably advance a legitimate correctional goal. *Rhodes*, 408 F.3d at 567–68.

8 To prevail against Defendants’ motion for summary judgment, Weddle must
 9 demonstrate a triable issue of material fact on each element of his retaliation claim.
 10 *Brodheim*, 584 F.3d at 1269 n.3. In support of summary judgment, Defendants argue
 11 that Weddle cannot carry his burden with respect to elements two and three. (ECF No.
 12 82 at 5-8.)

13 **1. Retaliatory Motive**

14 To satisfy the causation element of a retaliation claim, a plaintiff must show that
 15 his First Amendment activity was “the substantial or motivating factor behind the
 16 defendant’s conduct.” *Brodheim*, 584 F.3d at 1271 (internal quotation marks omitted).
 17 The evidence establishing such a motive is often circumstantial, *Pratt v. Rowland*, 65
 18 F.3d 802, 808 (9th Cir. 1995), but “mere speculation that defendants acted out of
 19 retaliation is not sufficient.” *Wood v. Yordy*, 753 F.3d 899, 905 (9th Cir. 2014).

20 Defendants contend that there is no causal connection between the alleged
 21 retaliatory acts and the filing of an informal grievance because there is no evidence of
 22 any grievance being filed either prior to or on September 5, 2014. (ECF Nos. 82 at 5-6;
 23 82-1.) A review of Weddle’s grievance history shows Weddle did not initiate the
 24 grievance process by filing an informal grievance until September 7, 2014, two days after
 25 the alleged retaliatory incident. (*Id.*; see also ECF No. 82-6.) Defendants argue that
 26 Weddle has presented no evidence that would establish any First Amendment activity at
 27 the time of the alleged incident and thus he has not presented any evidence of
 28 retaliatory intent, and Weddle’s mere speculation that there is a causal connection is not

1 enough to raise a genuine issue of material fact. (*Id.*; citing *Nelson v. Pima Community*

2 College, 83 F.3d 1075, 1081-82 (9th Cir. 1996)).

3 Because Weddle did not file an opposition to the motion for summary judgment,

4 he has not presented any evidence to the court showing that he engaged in any First

5 Amendment activity prior to the filing of the Notice of Charges or that his First

6 Amendment activity was the substantial or motivating factor behind Defendants' actions,

7 and, therefore, he has not carried his burden of demonstrating a genuine issue for trial.

8 As no reasonable jury could conclude that the alleged retaliatory acts occurred *because*

9 of the filing of an informal grievance two days after the alleged incident, Defendants are

10 entitled to summary judgment.

11 **C. Count VI – Negligence Claim**

12 Weddle's Count VI negligence claim relates to the alleged fabricated charge

13 detailed in Counts I-V. (ECF No. 10 at 30-31.)

14 To state a negligence claim, a plaintiff must establish: "(1) the existence of a duty

15 of care, (2) breach of that duty, (3) legal causation, and (4) damages." *Sanchez ex.*

16 *Rel. Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 824, 221 P.3d 1276, 1280 (Nev.

17 2009) (en banc). Whether a duty exists is a question of law for the court to decide.

18 *Sparks v. Alpha Tau Omega Fraternity, Inc.*, 127 Nev. 287, 295, 255 P.3d 238, 244

19 (Nev. 2011).

20 Defendants argue that Weddle's negligence claim fails because there is no

21 genuine issue of material fact regarding the validity of the disciplinary charges related to

22 Weddle's conduct, and Weddle does not plausibly allege any facts that establish a

23 breach of any duty by either Defendant. (ECF No. 82 at 8.)

24 There is no evidence to support Weddle's assertion that the disciplinary charges

25 were fabricated. A review of the disciplinary hearing summary shows the notice of

26 charges was supported by evidence, including the victim's statement and video of the

27 incident. (ECF No. 82-8.) Weddle presents no evidence to the contrary. Importantly,

28 Weddle does not identify the specific duty that was owed to him by Defendants and

1 does not present any evidence that Defendants breached any duty. Accordingly,
 2 because there is no evidence to support Weddle's allegation that the disciplinary charge
 3 was fabricated and the negligence claim fails as a matter of law, the court recommends
 4 that Defendants' motion for summary judgment be granted.³

5 **D. Count VII – Injunctive Relief**

6 Weddle's remaining claim relates to injunctive relief sought against Defendant
 7 Williams for his alleged failure to expunge Weddle's record of the disciplinary conviction
 8 in violation of his due process rights. (ECF No. 10 at 31, 33.) Injunctive relief may be
 9 awarded only on a clear showing that the plaintiff is entitled to relief. *Winter v. Natural*
 10 *Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). Because the court
 11 recommends granting summary judgment as to the remaining claims in Weddle's
 12 complaint, and also finds that no evidence exists to support Weddle's claim that the
 13 disciplinary charge was fabricated, Weddle's request for injunctive relief in Count VII
 14 should be denied.

15 **IV. CONCLUSION**

16 Based upon the foregoing, the court recommends that Defendants' motion for
 17 summary judgment (ECF No. 82) be granted. The parties are advised:

18 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
 19 Practice, the parties may file specific written objections to this Report and
 20 Recommendation within fourteen days of receipt. These objections should be entitled
 21 "Objections to Magistrate Judge's Report and Recommendation" and should be
 22 accompanied by points and authorities for consideration by the District Court.

23 2. This Report and Recommendation is not an appealable order and any
 24 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
 25 District Court's judgment.

26
 27 ³ Because the court recommends that Defendants' motion for summary judgment
 28 be granted in its entirety based on a finding of no constitutional violations, it need not
 address Defendants' qualified immunity argument.

V. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that Defendants' motion for summary judgment (ECF No. 82) be **GRANTED**; and,

IT IS FURTHER RECOMMENDED that the Clerk ENTER JUDGMENT accordingly.

DATED: May 29, 2020.

UNITED STATES MAGISTRATE JUDGE